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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of) MM Docket No. 93-241
)
DARRELL BRYAN) File No. BPH-920109MA
)
SBH PROPERTIES, INC.) File No. BPH-920123MD
)
)
)
)
For Construction Permit for
New FM Channel 276A
Tusculum, Tennessee

To: Honorable John M. Frysiak
Administrative Law Judge

SUPPLEMENT TO
PETITION TO ENLARGE ISSUES AND
THRESHOLD SHOWING OF UNUSUALLY POOR BROADCAST RECORD

SBH Properties, Inc. ("SBH") by counsel herewith submits the following supplement to its Petition to Enlarge Issues and Threshold Showing of Unusually Poor Broadcast Record, filed September 30, 1993. This supplement, which addresses matters related to those addressed in the original Petition, is being filed within 15 days of the discovery of new evidence, pursuant to Section 1.229(b)(3) of the Rules, and supplements SBH's request for enlargement of the issues in the above proceeding against Darrell Bryan ("Bryan") to include the following additional issues:

7. To determine whether Bryan has violated the Commission's Rules in his operation of WSMG(AM) by failing to make available for public inspection, during regular business hours, the station's local public inspection file.

8. To determine in light of the evidence adduced under the foregoing issues the effect on Bryan's basic qualifications.

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In support whereof the following is shown:

BACKGROUND

1. As reflected in the attached Declaration of William Seaver, as a part of SBH's efforts in preparing its Reply to Bryan's Opposition to SBH's Petition to Enlarge Issues and Threshold Showing, he traveled to Greeneville, Tennessee and visited WSMG's studios, arriving at 9:12 AM on Friday, December 3, 1993, for the purpose of reviewing the station's public file. Mr. Seaver's review was intended to center particularly upon the issues/programs lists which had been absent from the file on July 8, 1993 when David Murray conducted his inspection. As reflected in his attached Declaration, Mr. Seaver was not only denied access to the the issues/programs lists in question, he was denied any access, whatsoever, to WSMG's public file. Furthermore, in denying Mr. Seaver access to WSMG's public inspection file, the employee in charge, Connie Thompson, explicitly advised Mr. Seaver that she was acting under express orders from Darrell Bryan that she was not to make the station's public inspection file available to anyone, unless Bryan was present, which he was not. Ms. Thompson also advised Mr. Seaver that she had no way of reaching Mr. Bryan. Having been denied access to the public file, Mr. Seaver left and was unable to return later in the day, due to having to return to Florida because of a business commitment the following day.

DISCUSSION

2. Section 73.3526 of the Commission Rules requires stations to maintain certain specified documents in a public inspection file and to make that file and its contents available for inspection by members of the public during regular business hours. The facts demonstrate that Mr. Seaver presented himself at WSMG's main studio on a weekday, during regular business hours, but was denied access to WSMG's public inspection file. Accordingly, WSMG violated Section 73.3526. Furthermore, the violation was clearly willful, inasmuch as Ms. Thompson had been expressly ordered by Darrell Bryan not to make the station's public inspection file available to anyone, unless Bryan was present. Since Bryan is not always present during regular business hours (and was not on the day in question), it is clear that it could reasonably be anticipated that adherence to his order would lead to violation of the Rule. Accordingly, the violation of Section 73.3526 was entirely willful and resulted from a direct order of Darrell Bryan, which was contrary to the requirements of Section 73.3526. Indeed, the fact that such an order was given reflects a serious dereliction of licensee duty by Mr. Bryan, inasmuch as it placed a condition on the availability of the station's public file, which was not permitted by law.

3. As a result of WSMG's failure to comply with the Commission's public file Rules, SBH was frustrated in its efforts

to address arguments advanced by Bryan in his Opposition to SBH's Petition to Enlarge. Thus, not only was the violation willful, but the circumstances suggest that Bryan may have had a motive to interfere with the availability of WSMG's public file and may have given the order to further that interest. In any event it is certainly clear that no such order was in effect at the time Mr. Murray reviewed the station's public file in July, 1993.

4. Inasmuch as Mr. Seaver was denied access to the file based upon explicit orders from Bryan, this violation of the Rules is relevant to Bryan's qualifications in this proceeding. This is the case, not only because he is responsible for the station's operations and compliance, but because the violation occurred precisely as a result of his express order, which may well have been motivated by his desire to frustrate SBH's ability to fully address issues relating to WSMG's compliance with the Commission's public file requirements. Accordingly, the requested issues should be added.

DISCOVERY

5. The following additional discovery is requested:

SBH would intend to take the deposition of Connie Thompson and any other employee of the station who takes responsibility for the custody of the WSMG's public file and would request the production of the following additional documents:

(a) All issues/programs lists and "Public Affairs" files for the period from October 1986 to the present.

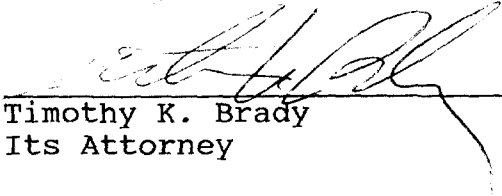
(b) All documents which have previously been prepared and placed in the station's public file, at any time, relating to issue-related programming broadcast from October, 1986 to the present, including any documents which may have subsequently been removed, revised or replaced.

(c) Any written instructions or statement of policy relating to the availability for inspection of the station's public file.

WHEREFORE, the Petition to Enlarge Issues and Threshold Showing of Unusually Poor Broadcast Record, as supplemented hereby, should be GRANTED and the issues enlarged as requested.

Respectfully Submitted,

SBH PROPERTIES, INC.

By: 
Timothy K. Brady
Its Attorney

P.O. Box 986
Brentwood, TN 37027-0986
(615) 371-9367

December 10, 1993

DECLARATION

I, William H. Seaver, do hereby certify that:

1. In April, 1992 I was advised by Kent Bewley of a conversation he had had with Frank Harkins, Sr. a few days earlier. The statements attributed to Mr. Harkins by Mr. Bewley in his September 28, 1993 Declaration are entirely consistent with what Mr. Bewley told me in April, 1992, concerning his then very recent conversation with Mr. Harkins.

2. On Friday, December 3, 1993 I visited the studios of WSMG(AM), Greeneville, Tennessee, for the purpose of inspecting the station's public file and, more specifically, for viewing and obtaining copies of those quarterly issues/programs lists which were not contained in the public file at the time David Murray inspected the file on July 8, 1993. I arrived at the studios at 9:12 AM and spoke with station employee, Connie Thompson. I indicated to Ms. Thompson that I wished to review the station's public file. Ms. Thompson refused to permit me to review the station's public file. When I pointed out that this was highly unusual, she stated explicitly that she had been expressly advised by Darrell Bryan not to permit anyone to review the public file, unless he was present at the station and that she was required to follow his instructions. She indicated that Mr. Bryan was not at the station and she had no way to contact him. Having been refused access to the public file and having no other

business at the station I left. It was not possible for me to return to the station at a later time, because I had a prior business commitment in Florida the following day, and thus, after making few other stops, I began the trip back to Florida.

I hereby certify under penalty of perjury that the above statement is true.

Signed and dated this 8 day of December, 1993.


WILLIAM H. SEAVER

[The original of this Declaration is appended to
SBH's Reply to Opposition to Petition to Enlarge,
filed 12/10/93]

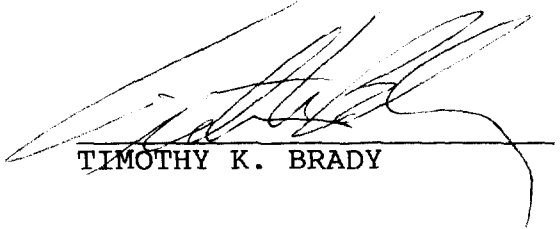
CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that on or before the
10th day of December, 1993, I will have served a copy of the
foregoing Supplement to Petition to Enlarge Issues and Threshold
Showing of Unusually Poor Broadcast Record by First Class mail,
postage prepaid upon the following:

Honorable John M. Frysiak
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 223
Washington, DC 20554

Robert A. Zuaner, Esq.
Hearing Branch
Federal Communications Commission
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Washington, DC 20554

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TIMOTHY K. BRADY